

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
	:	08cr893 (DLC)
-v-	:	
	:	<u>ORDER</u>
NIKOLAY LEVINSON,	:	
	:	
Defendant.	:	
	:	
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DENISE COTE, District Judge:

On March 5, 2019, Nikolay Levinson pleaded guilty to nine counts of mailing threatening communications in violation of 18 U.S.C. § 876(c). On September 27, 2019, Levinson was sentenced principally to 27 months' imprisonment. Because he has not been in Bureau of Prisons ("BOP") custody, BOP has not calculated a projected release date for Levinson. Nonetheless, the Government states that his federal sentence will, assuming Levinson qualifies for all available good time credit, end in approximately August 2021.

Levinson is currently imprisoned in the Bergen County Jail awaiting sentencing in New Jersey state court after pleading guilty in March 2020 to charges of bias intimidation in the second degree, terroristic threats, and conspiracy to commit bias intimidation in the fourth degree. The Government represents that his sentencing on those charges is scheduled for

June, but is likely to be adjourned due to the ongoing COVID-19 pandemic.

On April 29, 2020, Levinson, proceeding pro se, moved to modify or reduce his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(1)(A), citing the COVID-19 pandemic. On May 22, the Government opposed Levinson's petition. The Government has waived the statutory exhaustion requirement since Levinson is not housed in a BOP facility.

Levinson's application is denied. Pursuant to 18 U.S.C. § 3582 (c)(1)(A), Levinson's sentence may be reduced if, after consideration of the 18 U.S.C. § 3553(a) factors, a court finds that "extraordinary and compelling reasons" warrant such a reduction. 18 U.S.C. § 3582 (c)(1)(A)(i). Pursuant to the relevant United States Sentencing Guidelines Application Note, Levinson can demonstrate that extraordinary and compelling reasons justify relief if he has a "terminal illness" or a condition that "substantially diminishes" his ability "to provide self-care within the environment of a correctional facility." U.S.S.G. § 1B1.13, Application Note 1(A). Levinson has not asserted, much less demonstrated, that he meets either of those conditions.


Accordingly, it is hereby

ORDERED that the April 29, 2020 motion pursuant to § 3582(c)(1)(A) is denied.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mail a copy of this Order to Levinson at Bergen County Jail, P.O. Box 0369, Hackensack, N.J. 07601-0369 and note service on the docket.

SO ORDERED:

Dated: New York, New York
May 22, 2020



DENISE COTE
United States District Judge